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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 MICHAEL C. KEO, an individual

12 Plaintiff,

13 vs.

14 GOLDWYN ENTERPRISES, INC., a
15 California corporation;

16 Defendants.

Case No.: 8:22-cv-02266

COMPLAINT FOR

**(1) VIOLATION OF THE UNRUH
CIVIL RIGHTS ACT
(CALIFORNIA CIVIL CODE
§§ 51, 52);**

**(2) VIOLATIONS OF THE
AMERICANS WITH
DISABILITIES ACT OF 1990**

1 **I.**
2 **SUMMARY**

3 1. This is a civil rights action by plaintiff Michael C. Keo (“Plaintiff”) for
4 discrimination at the building, structure, facility, complex, property, land,
5 development, and/or surrounding business complex located 151 N. Tustin Ave.,
6 Tustin, CA 92780, Orange County (the “Property”). Plaintiff frequents the area as he
7 lives approximately five minutes from the Property and Heritage Liquor Store is
8 conveniently located to his home.

9 2. Plaintiff seeks damages, injunctive and declaratory relief, attorney’s fees
10 and costs pursuant to the Americans with Disabilities Act of 1990 (42 U.S.C. §§
11 12101, et seq.) and related California statutes¹ against the owner of the property
12 GOLDWYN ENTERPRISES, INC., a California corporation (“Defendant”).

13 **II.**
14 **JURISDICTION**

15 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343
16 for ADA claims.

17 4. Supplemental jurisdiction for claims brought under parallel California
18 law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C §
19 1367.

20 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

21 **III.**
22 **VENUE**

23 6. All actions complained of herein take place within the jurisdiction of the
24 United States District Court, Central District of California, and venue is invoked
25 pursuant to 28 U.S.C. § 1391(b), (c)

26 **IV.**
27 **PARTIES**

28 ¹ Plaintiff is not currently asserting a cause of action under California Civil Code § 55, but may
amend his complaint at a later time upon discovery of facts which give rise to such a claim.

8. Plaintiff is a T-12 paraplegic, and as a result is unable to walk or stand, and thus requires a use of a wheelchair at all times when traveling in public. Plaintiff is “physically disabled” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws. Plaintiff is a resident of Orange County, California. Plaintiff is considered a high frequency litigant as that term is defined in California Code of Civil Procedure § 425.55(b). In the twelve months preceding the filing of this complaint, Plaintiff filed eleven (11) other construction accessibility related claims (not including this one).

FACTS

10. Plaintiff visited the Property and encountered barriers (both physical and intangible) that interfered with – if not outright denied – Plaintiff’s ability to use and enjoy the goods, services, privileges and accommodations offered at the facility. To the extent known by Plaintiff, the barriers at the Property included, but are not limited to the following:

a. Parking spaces designated as accessible and accompanying access aisles have slopes and/or cross slopes that exceed 2.0%. Without a level parking space, it is difficult for Plaintiff to unload/transfer from a vehicle as his wheelchair rolls. Moreover, accessible parking spaces do not lead to accessible pathways. Specifically, parking spaces lead up to built up curb ramps that are too narrow and sloped for Plaintiff to navigate safely

1 and independently on his own.

- 2 b. Accessible parking spaces are improperly configured, including but not
3 limited to incorrect missing/and or incorrect warning signage at the
4 parking facilities thus making it difficult for Plaintiff to determine which
5 spaces are intended for and will accommodated disabled persons;

6 **11.** These barriers to access are listed without prejudice to Plaintiff citing
7 additional barriers to access after inspection by Plaintiff's access consultant, per the
8 9th Circuits standing standards under *Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir.
9 2008). These barriers prevented Plaintiff from enjoying full and equal access to the
10 Property.

11 **12.** Plaintiff thus experienced difficulty and discomfort as a result of the
12 accessible barriers he encountered. Although he would like to return to the Property
13 to patronize the convenience store at the Property, he continues to be deterred from
14 visiting the Property because of the future threats of injury created by these barriers.
15 Plaintiff often frequents the Property as he has a healthcare provider that operates out
16 of the Property. Plaintiff would return to the Property once the barriers have been
17 corrected as the stores located at the Property are conveniently located to his
18 residence.

19 **13.** On information and belief, Plaintiff alleges that Defendant knew that
20 these elements and areas of the Property were inaccessible, violate state and federal
21 law, and interfere with (or deny) access to the physically disabled. Moreover,
22 Defendant has the financial resources to remove these barriers from the Property
23 (without much difficult or expense), and make the Property accessible to the
24 physically disabled. To date, however, the Defendant refuses to remove those
25 barriers.

26 **14.** On information and belief, Plaintiff alleges that at all relevant times,
27 Defendant has possessed and enjoyed sufficient control and authority to modify the
28 Property to remove impediments to wheelchair access and to comply with the

1 Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations.
 2 Defendant has not removed such impediments and have not modified the Property to
 3 conform to accessibility standards.

4 **VI. FIRST CAUSE OF ACTION: VIOLATION OF CALIFORNIA LAW**
 5 **INCLUDING: THE UNRUH ACT, CIVIL CODE §§ 51, 52 AND THE**
 6 **AMERICANS WITH DISABILITIES ACT AS INCORPORATED BY CIVIL**
 7 **CODE SECTION 51(f)**

8 15. Plaintiff incorporates the allegations contained in paragraphs 1 through
 9 14 for this claim and incorporates them herein.

10 16. At all times relevant to this complaint, California Civil Code § 51 has
 11 provided that physically disabled persons are free and equal citizens of the state,
 12 regardless of disability or medical condition:

13 All persons within the jurisdiction of this state are free and equal, and
 14 no matter what their sex, race, color, religion, ancestry, national
 15 origin, disability, or medical condition are entitled to the full and
 16 equal accommodations, advantages, facilities, privileges, or services
 17 in all business establishments of every kind whatsoever. Cal. Civ.
 18 Code § 51(b).

19 17. California Civil Code § 52 provides that the discrimination against
 20 Plaintiff on the basis of his disabilities constitutes a violation of the anti-
 21 discrimination provisions of §§ 51 and 52.

22 18. Defendant's discrimination constitutes a separate and distinct violation of
 23 California Civil Code § 52 which provides that:

24 Whoever denies, aids or incites a denial, or makes any discrimination
 25 or distinction contrary to section 51, 51.5 or 51.6 is liable for each and
 26 every offense for the actual damages, and any amount that may be
 27 determined by a jury, or a court sitting without a jury, up to a
 28 maximum of three times the amount of actual damage but in no case

1 less than four thousand dollars (\$4,000) and any attorney's fees that
 2 may be determined by the court in addition thereto, suffered by any
 3 person denied the rights provided in Section 51, 51.5 or 51.6.

4 19. Plaintiff continues to be deterred from visiting the Subject Property based
 5 upon the existence of the accessible barriers. In addition to the instance of
 6 discrimination occurring in October 2022, Plaintiff is entitled to \$4,000.00 in statutory
 7 damages for each additional occurrence of discrimination under California Civil Code
 8 § 52.

9 20. Any violation of the Americans with Disabilities Act of 1990 (as pled in
 10 the Third Cause of Action) constitutes a violation of California Civil Code § 51(f)
 11 thus independently justifying an award of damages and injunctive relief pursuant to
 12 California law. Per § 51(f), "[a] violation of the right of any individual under the
 13 Americans with Disabilities Act of 1990 ... shall also constitute a violation of this
 14 section."

15 21. The actions and omissions of Defendant as herein alleged constitute a
 16 denial of access to and use of the described public facilities by physically disabled
 17 persons within the meaning of California Civil Code §§ 51 and 52. As a proximate
 18 result of Defendant's action and omissions Defendant has discriminated against
 19 Plaintiff in a violation of Civil Code §§ 51 and 51.

20 VII.

21 **SECOND CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH** 22 **DISABILITIES ACT OF 1990 (42 USC §§ 12101 *et seq.*)**

23 22. Plaintiff incorporates the allegations contained in paragraphs 1 through
 24 21 for this claim and incorporates them herein.

25 23. As part of the Americans with Disabilities Act of 1990 ("ADA"),
 26 Congress passed "Title III – Public Accommodations and Services Operated by
 27 Private Entities." 42 U.S.C. § 12181 *et seq.* The Property is one of the "private
 28 entities" which are considered "public accommodations" for purposes of this title,

1 which includes any “restaurant, bar, or other sales or rental establishment serving food
2 or drink.” § 301(7)(B).

3 24. The ADA states that “[n]o individual shall be discriminated against on
4 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
5 privileges, advantages, or accommodations of any place of public accommodation by
6 any person who owns, leases, or leases to, or operates a place of public
7 accommodation.” 42 U.S.C. § 12182.

8 25. The acts and omissions of Defendant set forth herein were in violation of
9 Plaintiff's rights under the ADA and the regulations promulgated thereunder, 28 CFR
10 Part 36 *et seq.*

11 26. On information and belief, Plaintiff alleges that the Property was
12 constructed or altered after January 26, 1993 thus triggering requirements for removal
13 of barriers to access for disabled persons under § 303 of the ADA. Further on
14 information and belief, Plaintiff alleges that removal of each of the barriers
15 complained of by Plaintiff as hereinabove alleged, were at all times herein mentioned
16 "readily achievable" under the standards §§ 301 and 302 of the ADA. As noted
17 hereinabove, removal of each and every one of the architectural barriers complained
18 of herein were also required under California law. In the event that removal of any
19 barrier is found to be "not readily achievable," Defendant still violated the ADA, per §
20 302(b)(2)(A)(v) by failing to provide all goods, services, privileges, advantages and
21 accommodations through alternative methods that were readily achievable.

22 27. On information and belief, as of the date of Plaintiff's encounter at the
23 Property and as of the filing of this Complaint, the Defendant denies and continues to
24 deny full and equal access to Plaintiff and to other disabled persons, including
25 wheelchair users, in other respects, which violate plaintiff's rights to full and equal
26 access and which discriminate against Plaintiff on the basis of his disability, thus
27 wrongfully denying to plaintiff the full and equal enjoyment of the goods, services,
28 facilities, privileges, advantages and accommodations, in violation of §§ 302 and 303

1 of the ADA. 42 USC §§ 12182 and 12183.

2 28. On information and belief, Defendant has continued to violate the law
3 and deny the rights of Plaintiff and other disabled persons to access this public
4 accommodation since on or before Plaintiff's encounters, as previously noted.
5 Pursuant to the ADA, § 308, 42 USC 12188 *et seq.*, Plaintiff is entitled to the
6 remedies and procedures set forth in § 204(a) of the Civil Rights Act of 1964, 42 USC
7 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability
8 in violation of the ADA or has reasonable grounds for believing that he is about to be
9 subjected to discrimination. Pursuant to § 308(a)(2), "In cases of violations of § 302(b)
10)(2)(A)(iv) and § 303(a) ... injunctive relief shall include an order to alter facilities to
11 make such facilities readily accessible to and usable by individuals with disabilities to
12 the extent required by this title."

13 29. Plaintiff seeks relief pursuant to remedies set forth in § 204(a) of the Civil
14 Rights Act of 1964, 42 USC 2000(a)-3(a), and pursuant to Federal Regulations
15 adopted to implement the Americans with Disabilities Act of 1990. Plaintiff is a
16 qualified disabled person for purposes of § 308(a) of the ADA who is being subjected
17 to discrimination on the basis of disability in violation of Title III and who has
18 reasonable grounds for believing he will be subjected to such discrimination each time
19 that he may attempt to use the property and premises.

20 **PRAYER**

21 WHEREFORE, Plaintiff prays that this court award damages and provide relief
22 as follows:

23 1. Issue a preliminary and permanent injunction directing Defendant as current
24 owner, operator, lessor, and/or lessee of the property and premises to modify the
25 above described property and premises and related facilities so that each provides full
26 and equal access to all persons, including but not limited to persons with physical
27 disabilities who use wheelchairs, and issue a preliminary and permanent injunction
28 directing Defendant to provide and maintain facilities usable by plaintiff and similarly

1 situated persons with disabilities, and which provide full and equal access, as required
2 by law, including appropriate changes in policy;

3 2. Retain jurisdiction over the Defendant until such time as the Court is satisfied
4 that Defendant unlawful policies, practices, acts and omissions, and maintenance of
5 inaccessible public facilities as complained of herein no longer occur, and cannot
6 recur;

7 3. Award to Plaintiff all appropriate damages, including but not limited to
8 statutory damages, general damages and treble damages in amounts within the
9 jurisdiction of this Court, all according to proof;

10 4. Award to Plaintiff all reasonable statutory attorney fees, litigation expenses, and
11 costs of this proceeding as provided by law;

12 5. Award to Plaintiff prejudgment interest pursuant to California Civil 17 Code§
13 329

14 6. Grant such other and further relief as this Court may deem just and proper.
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17 ASCENSION LAW GROUP, PC

18 DATE: December 19, 2022

19 /s/Pamela Tsao

20 Pamela Tsao, attorney for Plaintiff

21 MICHAEL C. KEO
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